IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5496 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ALL INDIA BAJAJ ELECTRICALS EMPLOYEE'S FEDEERATION

Versus

CHIEF LABOUR COMMISSIONER

Appearance:

MR NR SHAHANI for Petitioner

MR JD AJMERA for Respondent Nos. 1 and 2

NANAVATI ASSOCIATES for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 04/12/96

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner seeks directions of this court to respondent No.1- Chief Labour Commissioner (Central) and respondent No. 2 Union of India to refer the industrial dispute centering round demands elaborately enumerated in

Annexure A to the petition, to the National Industrial Tribunal , by invoking powers under Section 10(1-A) of the Industrial Disputes Act,1947 ('ID Act' for short).

The petitioner is a registered federation of 13 different unions which are having their respective membership in 13 States. It is duly registered under the Indian Trade Unions Act since 6.12.1975. It is inter alia contended by the petitioner that as respondent No.3 is multi-State establishment, it has sought conciliation and reference from respondents Nos.1 and 2 invoking aids of Section 10 (1-A) and Section 7-B of the ID Act. It is also the case of the petitioner that authorities have not exercised their power of conciliating and intervening in the industrial disputes and , therefore, the pay-scales of members of the petitioner federation have stagnated since 1.1.1996 despite the last settlement has expired in December 1995. The petitioner has,therefore, filed the petitioner for early conciliation and resultant reference to the National Industrial Tribunal. The petitioner federation had submitted a charter of demands to the employer on 24.11.1995 in view of expiry of earlier settlement on 31.12.1995. This set of demands for wage scale and general service conditions were submitted on behalf of 13 affiliated unions and their members who are spread over in 13 different States.

The petitioner federation has got membership in various establishments of Bajaj Electricals Limited which is having its head office at Bombay and the members of these establishments and offices are members of their respective unions who are constituent units of the petitioner federation. A State-wise list of such constituent units and establishments is placed on record at Enclosure 'I'. A charter of demands made by the petitioner federation to the respondent employer is at Enclosure 'II',which are part of letter at Annexure 'A' from the petitioner federation to respondent No.1.

The petitioner federation is also duly recognised by the company for settling industrial disputes regarding wages and other service conditions . The last settlement was signed by the petitioner federation with the employer on 28.6.1992 under Section 2(p) of the ID Act. Moreover, the said last settlement came to be adopted in toto by the State unions which are affiliated bodies, with the respondent establishment before the State Government labour authorities . This method of recording settlement is being followed since almost 1975. The petitioner federation has, however, contended that earlier employer was cooperative with the result, there was no occasion

for any reference.

However, a reference became necessary on account of the fact that the employer had not started any negotiations with the petitioner federation so far, because of non-cooperative approach adopted by the employer. It is also pleaded by the petitioner that the employer is now trying to split the workers by inducing small group of workers in one of the States to sign the settlement with them. It is alleged that now the employer refuses to enter into any negotiations unless the said unfair settlement with the small group of workers is adopted by other constituents. It is in this context that it has been pleaded that the employer is forcing affiliated unions of the petitioner federation to have large number of references before the Industrial Tribunals of different States and his adopting such strategy so as to tire-out the petitioner federation and its said units. It in this set of circumstancess that the petitioner is compelled to seek intervention from respondent No.1 who has not yet initiated any dialogue despite repeated demands and requests.

It is in this context, therefore, that by a letter dated 30.5.1996 ,the petitioner federation requeted respondent No.1 to intevene in the industrial dispute ofvarious establishments of the respondent company in 13 different States by holding conciliation proceedings in Delhi or any other convenient place or even at Ahmedabad.It was also further requested to refer the industrial dispute to the National Industrial Tribunal appointed by the Central Government under Section 7-B of the ID Act.

Respondent No.3- M/s Bajaj Electrical Limited has filed affidavit in reply inter alia raising the following contentions:

1. This court has no territorial jurisdiction;

2. In the alternative, there are no merits in the

petition and therefore, it should be rejected.

3. That no question of any national importance is involved.

4. Some of the members of the unions have,after negotiations, entered into settlement with the respondent company.

A few material admitted facts may be highlighted;

1.There are 20 branches throughout the country employing about 170 employees.

2. The petitioner federation has 13 different unions which are having their respective membership in 13 States.

3. The petitioner federation is registered under the Indian Trade Unions Act,1926;

4. The petitioner federation is recognised for the purpose of settling industrial disputes regarding wages and other service conditions '

5. The last settlement was signed by the petitioner federation with the employer on 28.6.1992.

6. The said settlement was adopted in toto by the State unions,like that- affiliated bodies with the respondent establishment before the State Government labour authorities. That such method of recording settlement is being followed since 1975'

7. That one of the establishments of the respondent company is located in Ahmedabad with the establishment of about 20 employees.

8. The petitioner federation is now operating from Ahmedabad.The President, General Secretary and Treasurer of the petitioner federation are residing in Ahmedabad.

section 10 (1-A) prescribes that the Central Governhment is empowered to constitute a National Tribunal and refer to it an industrial dispute for any matter appearing to be connected with or relevant to the dispute for adjudication on the satisfaction of the following conditions :

(i) that an industrial dispute exists or is apprehended.

(ii) that a dispute involves any question of national importance;

(iii) or that the dispute is of such nature that industrial establishments in more than one State are likely to be interested in or affected by such dispute'

(iv) that the dispute should be adjudicated by a National Tribunal'

(v) that the order of Reference is in writing;

(vi) that the dispute may relate to any matter specified in 2nd or 3rd Schedule.

If the conditions enumberated above are satisfied , then the Central Government is empowered to a refer a dispute to the National Tribunal for adjudication. If for instance, the Central Government thinks it necessary that uniform conditions of service should be evolved in National Tribunals, then this subsection empowers the Central Government to champion the cause and the objective through constitution of National Tribunal. If in the opinion of the Central Government, condition exists as pre-condition to the making of a reference to the Industrial Tribunal, if any of these conditions does not exist, reference to the Industrial Tribunal need not be justified.

It could very well be seen from the provisions of Section 10(1-A) that the Central Government is given very wide discretion for making a reference with respect to Inter-State industrial establishments. The expression "industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute" employed by the Legislature clearly goes to show that for exercise of powers in this behalf, it is not only necessary that inter-State establishments should be affected but it is also sufficient even if they are likely to be interested in the dispute sought to be referred to the National Tribunal.

It was seriously contended that this court is not competent to pass any order for want of territorial jurisdiction. Thus, it was submitted that this court has no jurisdiction to hear the present petition. It is, therefore, submitted that as the dispute raised by the petitioner in the present form is relating to the Reference to be made to the National Tribunal of their charter of demands for the employees who are employed in various departments of the respondent company, this petition is incompetent and not maintainable.

Reliance is also placed by the learned counsel for the respondent company on the decision of the apex court in Lef.Col. Khajursing vs. Union of India, AIR 1961 SC 532. Learned counsel Mr. Shahani for the petitioner has contended that it is an admitted fact that the petitioner is operating from Ahmedabad and Ahmedabad address is given for correspondence.It is further submitted that it is also admitted fact that the President, General

Secretary and Treasurer are all residing at Ahmedabad. One of the establishments of the respondent company is located in the city of Ahmedabad. This establishment has got almost 20 employees who are directly interested in this charter of demands. It is also stated that any of them could have moved this court under Article 226 of the Constitution of India.

Relevant extract from Article 226 reads as under :

"226. (1) Notwithstanding anything in Article 32, every High court shall have power, throughout the territories in relation to which it exercises jurisdiction,to issue ao any person or authority,including in appropriate cases any Government, within whose territories , directions , orders or writs,including writs in the nature of habeas corpus,mandamus,prohibition, quo warranto and certiorari,or any of them for the enforcement of any of the rights conferred by part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions,orders or writs to any Government, authority or person may also be exercised by any High court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Govenrment or authority or the residence of such person is not withion those territories,'

Prior to introduction of clause (1A), which is renumbered as clause (2) by the 42nd Amendment Act, it was held that the writs do not run beyhond the territories in relation to which each High court exercises jurisdiction. Hence,a High court could not issue a writ or order under Article 226 unless the person, authority or Government against whom the writ is sought was physically resident or located within the territorial jurisdiction of the High court. After amendment,even if cause of action arises,wholly or in part, within the territorial jurisdiction of that High court, it may issue a writ against a person or authority resident within the jurisdiction of another High court.

Reliance on the decision of the Supreme court in Lef.Col.Khajurisngh (supra) by the learned counsel for the respondent company is misplaced as the said decision was rendered prior to insertion of clause (2) in Article 226. Therefore,the learned counsel for the respondent

company is not in a a position to get any slice of profit out of citation of the said decision. As a result of insertion of clause (lA) which had been introduced by the Constitution (15th Amendment) Act,1963 which has been renumbered as clause (2) by the Constitution (42nd Amendment) Act,1976, a petition under Article 226 could be filed in any one of the High courts coming under the following heads :

(i) the High court within whose territorial jurisdiction a person or authority against whom the relief is sought resides or is situated;

(I) the High court within whose jurisdiction the cause of action in respect of which relief is sought under Article 226 has arisen wholly or in part;

The main prayers in this petition are both directed against the authorities of the Central Government and they have not raised any territorial objection for exercise of jurisdiction of this court. However, the respondent No.2 company has raised the dispute about jurisdiction of this court. Having regard to the facts and circumstances emerging from the record of the present case, part of cause of action has arisen within the territorial jurisdiction of this court. The petitioner has 13 different unions which are having their required membership in 13 States including Ahmedabad. The petitioner has raised a charter of demands for the employees belonging to various establishments of the respondent-employer since 24.11.1995 for pay-scales and other incidental benefits for which conciliation and Reference are required to be made by respondents Nos.1 and 2.

The petitioner by its letter dated May 30,1996 requested the Chief Labour Commissioner (Central) to intervene in the industrial dispute of various establishments of the respondent company located in 13 States by holding conciliation proceedings and to refer this dispute to the National Tribunal appointed by the Government under Section 7-B of the ID Act. The correspondence of the petitioner federation is made by its Ahmedabad office. Thereafter , several letters were written by the petitioner federation. Inspite of repeated requests by correspondence and by person,there was no response from the respondents. Finally, letter was written on July 22,2996. He was requested therein to take required action in the matter

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The petitioner federation is operating from Ahmedabad and Ahmedabad office address is given for correspondence. The office bearers like President, General Secretary and Treasurer of the petitioner federation are residing in Ahmedabad. The industrial dispute relates to general charter of demand for wages and other service conditions . The industrial dispute sought to be referred to the National Tribunal is not attended much less it is subscribed to. Reliance is also placed on the unreported decision of the apex court dated 29.9.1989 on the Petition for Special Leave to Appeal (Civil) No. 12730 of 1988 (AN) arising from the judgment and order dated 7.10.1988 of the Calcutta High court. . The Supreme court has directed tha a National Industrial Tribunal be constituted which shall conclude the proceedings in relation to matters specified in the schedule as expeditiously as possible. Having regard to the facts and circumstances emerging from the record of the present case,this court is satisfied that there is no substance in the plea that this court has no territorial jurisdiction.It is totally meritless and hence rejected.

In para 11 (A) of the petition, prayer is that respondents Nos.1 and 2 should be directed immediately to intervene,conciliate and refer the Industrial dispute centering round the demands which are made in Annexure 'A' within outer time limit of four week to the appropriate National Tribunal under Section 19(1-A) of the ID Act. Sub-section (1-A) empowers the Central Government to constitute a National Tribunal and refer to it an industrial dispute or any matter appearing to be connected with or relevant to the dispute for adjudication, provided the aforesaid conditions are satisfied. Two things must be noted. One is only the Central Government can act under this sub-section and second, it does not matter whether the appropriate Government in relation to the dispute is the Central Government or any other Government. It is,therefore, clear that if the conditions enumerated hereinabove are satisfied, then the Central Government is authorised to refer the dispute to the National Tribunal for adjudication . Whether the conditions are satisfied or not is again a matter for opinion or satisfaction of the Central Government alone. However, there is a fit case for consideration by the Central Government.

The second contention raised by the learned counsel for the respondent company Mr. Nanavati is that in fact, there are no merits in the petition and ,therefore, it should be rejected. It is also submitted by him that there is no question of national importance in the

present matter and some of the members of the unions have entered into settlement with the respondent company.

The aforesaid contentions are controverted and challenged by the learned counsel for the petitioner Mr. Shahani.

Section 10(1A) clearly provides for power to the Central Government to refer an industrial dispute in a matter appearing to be connected with or relevant to the dispute in the second or third schedule to National Tribunal for adjudication irrespective of the fact whether or not it is an appropriate Government in relation to such dispute. Provisions of Section 10 (1-A) evidently go to show that it is the Central Government which has to form its opinion on the question as to whether an industrial dispute exists or is even apprehended.In the present case, it not the case that there is no industrial dispute at all. Obviously, before the Central Government makes a reference, it must form its opinion on the following aspects that:

(i) there is an industrial dispute which satisfies eligibility or requirements of Section 2-(k) ;

(ii) such industrial dispute exits or atleast apprehended at the time of making the Reference;

(iii) such industrial dispute as defined under Section 2-K-

(a) involves any question of national importance, or

(b) is of such type or character that industrial establishments situated in more than one State are likely to be affected or interested with regard to such industrial dispute.

(4) the industrial dispute requires to be adjudicated upon by a National Tribunal to be constituted under Section 7-B.

It could, therefore,very well be visualised that for making a Reference to the National Tribunal, the aforesaid conditions must co-exist. The alternative submission of the learned counsel Mr.Nanavati that there is no question of any national importance involved cannot be accepted on two counts. Firstly, one of the conditions for Reference to the National Tribunal is not that there should be a question of national importance in the industrial dispute.There is a clear provision in Section 10(1-A) that one of the conditions which must

co-exist is involving question of national importance or the dispute is of such a nature that the industrial establishments situated in more than one State are likely to be interested in or affected by such dispute. The expression 'or' undoubtedly signifies that the Central Government while undergoing the process of forming opinion has to address itself to the vital question as to whether the industrial dispute under Section 2-(k) involves a question of national importance (which is very important) or the industrial dispute is of such type and character that the industrial establishments situated in more than one State are likely to be interested in or affected by such dispute. In light of the backdrop of facts , prima facie,it cannot be said that the industrial establishments of the respondent company which are situated in 13 States are not likely to be affected by such industrial dispute.Needless to mention that the admitted aspects which are highlighted hereinbefore clearly go to show that the petitioner federation has 13 different unions which are having their respective membership in 13 States and the petitioner federation is a registered union under the Indian Trade Unions Act and is recognised for the purpose of settling industrial disputes regarding wages and other service conditions and pursuant to that,it had also made settlement with the employer on 28.6.1992. Such method of recording settlement by the petitioner federation with the employer has been in vogue since 1975. The industrial dispute between the petitioner federation and the respondent company would obviously affect 20 branches of the respondent company throughout the country of many employees. It is in this context that, prima facie , it cannot be contended that industrial dispute under consideration is of such nature that the industrial establishments situated in more than 13 States having 20 branches are not likely to be interested in or affected by such dispute. Therefore, the contention that there is no merit in the present petition is required to be rejected being meritless itself.

As such, there is a policy and purpose behind having adjudication by the National Tribunal to be constituted by the Central Government under Section 7-B of the ID Act. For making a Reference in a case with respect to Inter-State establishments, like one on hand, the discretion of the Central Government is very wide -either the industrial dispute involving a question of national importance OR industrial dispute is of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such dispute. Needless to state that existence of even

one condition of them would empower the Central Government for making a Reference to the National Tribunal. It cannot be contended that both national importance and inter-State establishments' involvement must co-exist. Admittedly, in the present case, the proposed industrial dispute is attributable and relatable to the interest of larger section of employees working in 13 different States having industrial establishments of the respondent company. for exercise of powers under Section 10(1-A) by the Central Government, it is not necessary that inter-State establishments should be affected as such, but it is sufficient even if they are 'likely to be interested' in the dispute proposed to be referred to the National Tribunal.The expression 'interested' or 'affected' cannot be equated.There is difference between the connotation and its import insofar as the words 'interested' and 'affected' are concerned. In short,it can safely be concluded that the discretionary powers of the Central Government for making Reference to the National Tribunal are very wide and exercise of such powers should be made liberally so as to advance the cause of uniformity, discipline and welfare of the affected or likely-to-be affected employees or workers.

Section 10(1-A) empowers the Central Government to refer an industrial dispute to National Tribunal which can be constituted under Section 7-B of the ID Act in the circumstances stated hereinbefore. However, it would be interesting and material to note that provision of sub-section (6) is designed and devised so as to avoid multiplicity of proceedings which may ensue from such Reference. This provision creates a bar or ban on adjudication upon any matter by the Labour court or Industrial Tribunal when such dispute or matter has been referred for adjudication to the National Tribunal under sub-section (1A). The underlying purport and design of the non-obstante clause is that irrespective of other provisions in the ID Act,it is the National Tribunal alone which shall be seized of the matter referred to it after Reference under sub-section (1A) in complete exclusion of ajudication by other adjudicating authority in different States under the ID Act or under any similar State statute.

It would also be material to note that even clause (a) of Sub-section (6) provides that if the matter referred to the National Tribunal under sub-section (1-A) is,at the time of such Reference,pending in proceedings before the Industrial Tribunal or the Labour court, as the case may

be,insofar as it relates to such matter or dispute,the same shall be deemed to have been quashed. This is highlighted with a view to showing the mechanism and mandate enshrined in the entire scheme provided in Section 10 and obviously, it would dispel and repel the submission that different unions in different States should go for resolution or adjudication of the industrial dispute when the entire dispute is likely to affect the interest of the workmen or employees of other industrial establishment of the same organization in inter-States. Thus, the entire scheme of Section 10 supports that instead of going in different adjudicatory process for common cause or common matter or common interest, it would be expedient and desirable to have such industrial dispute adjudicated upon by a forum like the National Tribunal for which the Central Government is conferred with wide discretion under Section 10(1-A) read with Section 7-B.

The aforesaid factual scenario emerging from the record and the resultant discussion undoubtedly go to show that this court has jurisdiction under Article 226 of the Constitution of India and to hold that there is a fit and proper case for consideration by the Central Government for exercise of power conferred under Section 10(1-A). The legal missiles raised by Mr Nanavati for the respondent company are of no avail and,therefore, all the aforesaid submissions deserve straightway rejection. Accordingly, they are rejected. Needless to reiterate that on behalf of respondent No.1- Chief Labour Commissioner (Central) and respondent No.2- Central Government, no objection is raised with regard to maintainability of the petition on the ground of territorial jurisdiction of this court. They have also not filed any counter or affidavit-in-reply.

The learned counsel for the petitioner federation has also contended that in some of the rare cases like the one on hand, the court is empowered and competent to direct the Central Government to make Reference straightway. Without going into this proposition, this court is of the opinion that in light of the aforesaid peculiar facts and special circumstances and the discussion above, undoubtedly,there is a fit and proper case for consideration by the Central Government for exercise of power conferred on it under Section 10 (1-A) of the ID Act. Since the question of making Reference falls within the discretion of the Central Government, it would also be desirable and expedient to leave the matter to the Central Government for decision as to whether a Reference be made or not, considering the over-all facts

and circumstances and its exercise of powers under Section 10(1A) by giving direction ,in the event of a failure report after conciliation process is undergone.

IN THE RESULT, respondent No.1- Chief Labour Commissioner (Central) is hereby directed to intervene by starting conciliation proceedings and conclude the same expeditiously either by recording a statement or by submitting a failure report to respondent No.2- Union of India ,within a period of four weeks from the date of receipt of writ of this court. In the event of submission of failure report to respondent No.2- Union of India, respondent No.2 shall take a decision under Section 10 (1-A) read with Section 7-B of the ID Act in accordance with law as early as possible but not later than six weeks from the date of receipt of failure report ,if any.

CONSEQUENTLY, this petition is allowed to the aforesaid extent with costs . Rule is made absolute to this extent. Request to effect direct service of writ of this court to respondents Nos.l and 2 is also granted.
